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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity No. 78-351.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS.

STATEMENT BY PETITIONERS OF BASIS ON WHICH THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION UPON APPEAL TO REVIEW THE FINAL ORDER OR DECREE ENTERED HEREIN.

Now come The Atchison, Topeka & Santa Fe Railway Company et al., petitioners herein, and present this statement of the basis on which the Supreme Court of the United States has jurisdiction upon appeal to review the final order or decree entered herein on November 2, 1934.

(1) In this suit petitioners sought to enjoin, annul, suspend and set aside an order made by the Interstate Commerce Commission on July 2, 1934, in a proceeding before

it known as its Docket 24375, *Hygrade Food Products Corporation* vs. *Atchison, Topeka & Santa Fe Railway Company et al.* That proceeding involved the propriety and legality of the collection by the Union Stock Yard & Transit Company of Chicago, a defendant therein, of its yardage charges published in its tariffs on file with the Secretary of Agriculture, from Hygrade Food Products Corporation, on shipments of livestock, consigned to said Hygrade Food Products Corporation at the stockyard of the Union Stockyard & Transit Company in Chicago, Illinois, in cases where delivery of such livestock was taken by the consignee at the unloading pens in said stockyard. The order made by the Interstate Commerce Commission in said proceeding on July 2, 1934, requires all defendants therein, including petitioners, to cease and desist, on or before September 25, 1934, from the practice whereby said yardage charges are collected from the Hygrade Food Products Corporation on shipments of livestock in carloads, consigned to it at the Union Stockyard in Chicago, Illinois, in cases where delivery of such shipments is taken at the unloading pens in said stockyard, and awards reparation to said Hygrade Food Products Corporation on past shipments. The effective date of said order was thereafter postponed by the Interstate Commerce Commission to November 5, 1934. After the filing by petitioners of their petition herein, a hearing was had thereon in the District Court, and on November 2, 1934, the court entered a decree dismissing the petition and sustaining the order. The decree of the District Court was a final judgment within the meaning of the Act of Congress of October 22, 1913 (38 Stat. L. 220). On November 2, 1934, petitioners presented their petition for appeal and their assignment of errors, and also their petition for a stay of the order of the Interstate Commerce Commission, pending their appeal to the Supreme Court of the United States and the decision of that Court on such

appeal. On the same day, November 2, 1934, the District Court entered an order allowing the appeal prayed for and an order staying the order of the Interstate Commerce Commission pending such appeal and a decision therein.

(2) The jurisdiction of the Supreme Court of the United States to review said decree on appeal is sustained by the following statutory provisions. The Urgent Deficiencies Act of October 22, 1913 (38 Stat. L. 219-220), confers upon the District Courts of the United States the jurisdiction theretofore vested in the Commerce Court, including jurisdiction over all suits brought to enjoin, suspend, annul, or set aside any order of the Interstate Commerce Commission. The same act provides, with reference to an appeal from the final decree of a District Court in such action, as follows:

> "A final judgment or decree of the District Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases." (38 Stat. L. 220; Title 28, U. S. C. A., Sec. 47.)

By the Act of February 13, 1925, entitled "An Act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court, and for other purposes," Section 238 of the Judicial Code was amended to provide:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> (4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the

fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend or set aside orders of the Interstate Commerce Commission other than for the payment of money." (43 Stat. at L., 938; Judicial Code, Sec. 238; Title 28, U. S. C. A., Sec. 345.)

(3) The decree sought to be reviewed upon this appeal was made and entered on November 2, 1934. The petition for appeal herein together with an assignment of errors was presented, and the order allowing the appeal was entered, on November 2, 1934.

(4) Cases which sustain the jurisdiction of the Supreme Court of the United States to review said decree are as follows:

Virginian Railway Company v. *United States*, 272 U. S. 658.

United States v. *New York Central Railroad Co.*, 263 U. S. 603.

Dayton-Goose Creek Ry. Co. v. *United States*, 263 U. S. 456.

Stafford v. *Wallace*, 258 U. S. 495, 512.

Louisville & Nashville Railroad Co. v. *United States*, 238 U. S. 1.

United States v. *The Baltimore & Ohio R. R. Company*, 225 U. S. 306.

Respectfully submitted,

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